

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
Plaintiff,

V.

SHANE C. BUCZEK
Defendant,

) Docket No.

) 1:09CR 00121-001 ✓

) MOTION FOR RETURN

) OF SEIZED PROPERTY

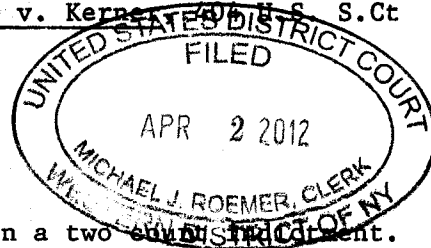
) PURSUANT TO RULE 41(g)

* * * * *

COMES NOW, the Defendant, Shane C. Buczek, appearing Pro Se, and files this MOTION and respectfully requests from this Court, that since I am unlearned at law, that I not be held to the strict standards as an attorney would be, and that I be given the leeway mandated by Haines v. Kerner, 404 U.S. S.Ct 519, 520 (1972).

STATEMENTS OF FACT

- 1) On April 21, 2009, the Defendant was charged in a two count indictment.
- 2) Within said indictment there was NOT and reference of forfeiture allegations at any time, nor was reference made at sentencing.
- 3) Pursuant to Federal Rules of Criminal Procedure (FRCrP) 32.2 (a) "forfeiture allegations must be contained in indictment information."
- 4) On or about January 16, 2009, the prosecution, through it's affiliate the FBI, seized from the address of 7335 Derby Rd, Derby, New York, all of the specific items listed in EXHIBIT A.
- 5) Pursuant to FRCrP 32.2 (b) "A court must NOT enter a judgement of forfeiture in a criminal proceeding unless the indictment or information contains NOTICE to the Defendant the the government will seek the forfeiture of property an part of any sentence."
- 6) Pursuant to FRCrP 32.2 (a) "a court must NOT enter a judgement of forfeiture in a criminal proceeding unless the indictment of information contains



notice to the Defendant that the government will seek the forfeiture of the the property as part of any sentence."

- 7) The Petitioner NEVER received "forfeiture allegations" as specified and required pursuant to FRCrP 32.2(a).
- 8) The Defendant NEVER received NOTICE of the government seeking property forfeiture as specified and required pursuant to FRCrP 32.4(b).
- 9) The Defendant NEVER received NOTICE or judgment from this court pertaining to requirements for a judgement of forfeiture in a criminal proceeding pursuant to FRCrP 32.2(a).
- 10) The prosecutor did knowingly and willfully violate the requirements of FRCrP 32.2(a) by refusing to include "forfeiture allegations" in the Indictment, and failing to include them at sentencing.
- 11) The prosecution did knowingly and willfully violate the requirements of FRCrP 32.4(b) by refusing to provide NOTICE that it was seeking property forfeiture against the Defendant.

Based upon the foregoing, and the government's knowing and willful refusal to comply with this court's established Federal Rules of Criminal Procedure the Defendant asks this honorable court to return all of the improperly seized property specifically listed in EXHIBIT "A" attached hereto, to its rightful owner, the Defendant, pursuant to FRCrP 41(g) based upon the facts that:

- 1) The Defendant is the rightful owner of the seized property;
- 2) The property is not contraband;
- 3) The seizure of the property was improper and illegal pursuant to the government's knowing and willful refusal to comply with the law by disobeying the strict guidelines pertaining to forfeiture and seizures in FRCrP 32.2(a) and 32.4(b).

Respectfully submitted this 29 day of MARCH, 2012

"Without Recourse"

By: Shane Christopher Buczek

Shane-Christopher Buczek,

Solvent, Real Party Interest

All Rights Reserved UCC 1-308

Authorize Representative

c/o 7335 Derby Road
Derby, New York [14047]
Non Domestic Without the U.S.

CERTIFICATE OF SERVICE

On this 29th day of March 2012, a true and correct copy of Motion for Return of Seized property pursuant to Rule 41(g) was mailed to Jean Marie McCarthy - Deputy Clerk WDNY 2 Niagra SQ Buffalo, NY 14202 by U.S. mail, and the Clerk will serve the United States Attorney's Office in Buffalo, New York by electronic filing which is Court Order: Anthony Bruce U.S. Attorney's Office WDNY 138 Delaware Avenue Buffalo, New York [near 14202] united states of America.

By: *Shane-Christopher*
:Buczek

Date 3-29-2012

Exhibit "A"

Shane's

Property

Private Property

EVIDENCE RECOVERY LOG

PAGE 1 OF 2

PRINT LEGIBLY

GENERAL INFORMATION

DATE 01/16/2009

CASE ID 266 M-BF-39552

LOCATION 7335 Derby Rd, Derby, NY

PREPARER/ASSISTANTS JRS

JAD

PERSONNEL (Include Initials)

RECOVERED BY / OBSERVED BY (Last name)

WHERE FOUND

PACKAGING METHOD

COMMENTS (if needed)

ITEM #	DESCRIPTION	WHERE FOUND	RECOVERED BY / OBSERVED BY (Last name)	PACKAGING METHOD	COMMENTS (if needed)
001	52" LCD TV Samsung	Family Room	HCF	box	US Marshal
002	Universal TV stand	Family Room	JS		
003	5.1 Channel Home Theater System Yamaha	Family Room TV stand	HCF	as is	US Marshal
004	Blu Ray DVD Player	Family Room TV stand	JS	box	US Marshal
005	Computer Cart and File Cabinet	Office #2	HCF	box	US Marshal
006	Front load steam washer Samsung	Laundry Room	JS	as is	US Marshal
007	Front load steam dryer Samsung	Laundry Room	HCF	as is	US Marshal
008	Sony Portable boombox	Bedroom A	JS	box	US Marshal
009	10 Blu Ray DVDs (Singles) (Disk set)	Family Room	HCF	Paper	FBI Evid.
010	Plantronics wireless headset	Office #2	MPH	Paper	FBI Evid.
011	Apple iPad with charger	Office #2	JAD	Paper	FBI Evid.
012	Receipts, documents and 2 memory cards	Office #2	JS	Paper	FBI Evid.
013	Magellan Maestro 4250 GPS	Bedroom A closet	JAD	Paper	FBI Evid.
014	Bonded promissory note GE money \$42,000	Office #1 bathroom	JS	Paper	FBI Evid.
			EWG		
			CH		
			GRM		
			CH		
			AMA		
			TC		

CONTINUATION PAGE
PAGE 2 OF 3

PRINT LEGIBLY

GENERAL INFORMATION (COPY DATA FROM PAGE ONE)

DATE _____

CASE ID

CASE ID
266M-BF-39552

LOCATION

7335 Derby Rd, Derby NY.

PREPARER/ASSISTANTS

525

3A7

~~Case 1:09-cr-00121-WMS-HKS Document 316 Filed 04/02/12 Page 6 of 11~~

ITEM #	DESCRIPTION	WHERE FOUND	RECOVERED BY / OBSERVED BY (Last name)	PACKAGING METHOD	COMMENTS (if needed)
015	File folder labeled "DTC Check Recession, DTC Act.; Money; Payed checks"	Closet b/w Bedroom A and Office #2	JBB	Paper	FBI Evid.
016	Documents, receipts, Best Buy credit card <i>(see oil/waterproof)</i>	Office #2 desk	EG CH	Paper	FBI Evid.
017	Kodak camera; carry case and receipts	Office #2 steel file cabinet	EG CH	Paper	FBI Evid.
018	Diplomatic Ambassador (ID photo)	Office #2 steel file cabinet	EG CH	Paper	FBI Evid.
019	World Passport # 3392821	Office #2 steel file cabinet	EG CH	Paper	FBI Evid.
016-A	Best Buy Credit Card	Office #2 desk	CH	Plastic	FBI Evid.
	I.D. IS NOT FAKE! (ITS REAL NOT FAKE)				
	By: Shane-Christopher Buzard				
	DEUCE Republic				
	United States of America				
	(1776)				
	Commun Law				

ICMIPR05
PAGE 2

Collected Items for a Case
Case ID: 266S-BF-39552
Collected Item Type: All
Category Type: 1B

Cat/Num	Office and Storage Location	Acquired/ Type Chrgd Out	Charged Out To/ Reason	Contributor/ Description
1B13 E4236051	BF USMS	G 01/16/2009		SHANE BUCZEK 48" STEEL DESK AND FILE CABINET 52" LCD TV MODEL LM52A650A1F SN: AL0T3CHQB01458R TV STAND-GLASS & CHROME YAMAHA HOME THEATRE SYSTEM MODEL: HTR6130, SNT079018UW 6PCS SAMSUNG 7-4 CUBIC FEET GAS DRYER MODEL DV448AGP/XAA S/N: W03H5480A00248X W/PEDESTAL SAMSUNG 4.5 CUBIC FOOT STEAM WASHER MODEL WF448AAP/XAA, S/N: W03H5480A00173 SAMSUNG BLU-RAY PLAYER MODEL BD-P1500 S/N: 02RE6VC0625598W SONY CD CASSETTE BOOM BOX MODEL CFD5350 SN: 1215275

1B13 BF Removed

ICMIPR05
PAGE 1Collected Items for a Case
Case ID: 2668-BF-39552
Collected Item Type: All
Category Type: 1B12/17/09
14:34:07

Cat/Num Barcode	Office and Storage Location	Acquired/ Type Chrgd Out	Charged Out To/ Reason	Contributor/ Description
1B1 E4236019	VS1 BF VALU	DR1 V	01/16/2009	SHANE C. BUCZEK BEST BUY CREDIT CARD #7001062126486055
1B2 E4236032	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK RECEIPTS/DOCUMENTATION AND 2 MEMORY CARDS
1B3 E4236033	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK DOCUMENTATION/RECEIPTS
1B4 E4236034	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK 1 APPLE IPOD MODEL A1285 SN: 5U8392MV3QS
1B5 E4236035	CAB10 BF ECR	SH3 G	01/16/2009	SHANE CHRISTOPHER BUCZEK 1 PLANTRONICS-VOYAGER 520 WIRELESS HEADSET W/CHARGER
1B6 E4236036	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK (1) BONDED PROMISSORY NOTE- TO GE MONEY FOR \$42,000.00 BY SHANE BUCZEK
1B7 E4236037	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK 1 D. FOLDER-DIPLOMATIC AMBASSADOR ID
1B8 E4236038	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK WORLD PASSPORT #339286
1B9 E4236039	CAB10 BF ECR	SH3 G	01/16/2009	SHANE CHRISTOPHER BUCZEK MAGELLAN MAESTRO 4250 GPS
1B10 E4236040	CAB13 BF ECR	SH2 G	01/16/2009	SHANE CHRISTOPHER BUCZEK 10 BLU RAY DVD'S: DAY AFTER TOMORROW; PATRIOT; IRONMAN; I AM LEGEND; TERMINATOR 2; ULTIMATE MATRIX COLLECTION 5 DISK SET
1B11 E4236041	CAB13 BF ECR	SH2 G	01/16/2009	SHANE CHRISTOPHER BUCZEK KODAK CAMERA/CARRY CASE/RECEIPTS
1B12 E4236042	CAB7 BF ECR	DR1 G	01/16/2009	SHANE CHRISTOPHER BUCZEK FILE FOLDER LABELED "DTC CHECK RECESSION" WITH FILES LABELED "DTC ACCOUNT", "MONEY", "PAID CHECKS"

② Buffalo New York IS outside U.S. jurisdiction

[289 US 146] SUPREME COURT HAS SAID MANY TIME THE D.C. COURTS LACK CRIMINAL JURISDICTION

↓ "when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, on board any vessel belonging in whole or in part to the United States" or any of its nationals. And by § 41 of the Judicial Code, U. S. C. title 28, § 102, venue to try offenses "committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district," is "in the district where the offender is found or into which he is first brought." As the offense charged here was committed on board a vessel lying outside the territorial jurisdiction of a state, see Wynne v. United States, 217 U. S. 234, 54 L. ed. 748, 30 S. Ct. 447; United States v. Rodgers, 150 U. S. 249, 265, 37 L. ed. 1071, 1077, 14 <*pg. 1089> S. Ct. 109, and within that of a foreign sovereignty, the court below was without jurisdiction to try and punish the offense unless it was within the admiralty and maritime jurisdiction of the United States.

Two questions are presented on this appeal, first, whether the extension of the judicial power of the Federal government "to all cases of admiralty and maritime jurisdiction," by Art. 3, § 2 of the Constitution confers on Congress power to define and punish offenses perpetrated by a citizen of the United States on board one of its merchant vessels lying in navigable waters within the territorial limits of another sovereignty; and second, whether Congress has exercised that power by the enactment of § 272 of the Criminal Code under which the indictment was found.

↓ [1] The court below thought, as appellee argues, that as § 8 of Art. 1 of the Constitution specifically granted to Congress the power "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations," and "to make rules concerning captures on land and water," that provision must be regarded as a limitation on the general provision of § 2 of Art. 3, that the judicial power shall extend "to all cases of admiralty and maritime jurisdiction;" that as the specific

[289 US 147] Also See Article I Sec. 8. Cl. 17

grant of power to punish offenses outside the territorial limits of the United States was thus restricted to offenses occurring on the high seas, the more general grant could not be resorted to as extending either the legislative or judicial power over offenses committed on vessels outside the territorial limits of the United States and not on the high seas.

Before the adoption of the Constitution, jurisdiction in admiralty and maritime cases was distributed between the Confederation and the individual states. Article 9 of the Articles of Confederation provided that "the United States, in Congress assembled, shall have the sole and exclusive right and power . . . of establishing rules for deciding in all cases, what captures on land or water shall be legal, . . . appointing courts for the trial of piracies and felonies committed on the

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high seas and establishing courts for receiving and determining finally appeals in all cases of captures. . . ." So much of the general admiralty and maritime jurisdiction as was not included in this grant of power remained with the states. The powers thus granted were in substance the same as those later conferred on the national government by Article 1, § 8 of the Federal Constitution. This section was adopted to carry out a resolution of the Convention "that the national legislature ought to possess the legislative rights vested in Congress by the Confederation." Its primary purpose and effect was to transfer to the newly organized government the powers in admiralty matters previously vested in the Confederation.²

[289 US 148]

3 On June 5, 1787, Wilson stated to the Convention that he thought the admiralty jurisdiction should be given wholly to the national government. Resolution XVI which was referred to the Committee on Detail on July 26th, provided that the jurisdiction of the national judiciary "shall extend to cases arising under laws passed by the general legislature and to such other questions as involve the natural peace and harmony." Wilson was one of the five members of the Committee on Detail, chosen on July 24th, which reported, August 6th, Article XI, dealing with the jurisdiction of federal courts, and containing in § 3 a provision extending the jurisdiction of the Supreme Court "to all cases of admiralty and maritime jurisdiction" which was ultimately incorporated in § 2 of Article 3 of the Constitution, as finally adopted. Madison's Diary, International Edition, pp. 61, 336, 317, 318, 344.

By. Shane-Christopher Buczek

⇨90656-111⇨

Shane C Buczek
Executor of the Estate
Federal Correction Institution
P.O. Box 1000
Loretto, PA 15940
United States

of America

NON Domestic Without the U.S.

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